

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

ALL STAR AWARDS & AD SPECIALTIES INC.

Appellant-Respondent

v.

HALO BRANDED SOLUTIONS, INC.

Respondent-Appellant

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DOCKET NUMBER WD83327 consolidated with WD83352

DATE: January 12, 2021

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Appeal From:

Circuit Court of Jackson County, MO  
The Honorable John M. Torrence, Judge

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Appellate Judges:

Division Two  
Lisa White Hardwick, P.J., Thomas H. Newton and Karen King Mitchell, JJ.

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Attorneys:

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ALL STAR AWARDS & AD SPECIALTIES INC., Appellant-Respondent,  
v.  
HALO BRANDED SOLUTIONS, INC., Respondent-Appellant.**

**WD83327 consolidated with WD83352**

**Jackson County**

Before Division Two Judges: Hardwick, P.J., Newton, and Mitchell, JJ.

All Star, a family-owned promotional-products company, discovered that a long-time employee had begun working for a larger promotional-products distributor even before he announced that he was leaving All Star to work for distributor Halo. He approached All Star customers and solicited their business on behalf of Halo while still employed by All Star, transferred All Star client artwork to his personal account, had other All Star employees send him files to assist in the work he was doing for Halo, and disparaged All Star to some of the company's vendors. Halo had policies forbidding its employees from taking such actions, knew that the All Star employee was taking All Star business before he was terminated, but processed the orders and planned to continue to do so in the future because the employee did not have a non-competition agreement with All Star. All Star sued the employee for breach of the duty of loyalty and sued Halo for civil conspiracy as to the employee's breach. All Star also sued the employee and Halo for tortious interference with business expectancy, seeking actual and punitive damages. A jury found in All Star's favor, awarding the company \$500,000 in damages for tortious interference and \$5.5 million in punitive damages against Halo. Applying a statutory punitive-damages cap, the trial court reduced the punitive-damages verdict to \$2,627,709.40.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

**Division Two holds:**

All Star challenges the trial court's reduction of the punitive-damages award, arguing that the trial court misstated the law and misapplied the statutory cap. According to the trial court, because the claims All Star brought against its former employee and Halo were not known to the common law when Missouri adopted its constitution in 1820, the statutory cap did not violate All Star's right to have a jury decide the amount of punitive damages. Under the Missouri Constitution, any change made in the right to a jury determination as it existed when the state adopted the constitution "shall remain inviolate." Statutory enactments that interfere with that right are accordingly unconstitutional. Halo argues that breach of the duty of loyalty and tortious interference with business expectancy were not recognized by Missouri courts until the middle of the 1900s, so these claims would not have been tried by a Missouri jury in 1820, and thus, the trial court properly applied the statutory cap. We disagree. Our supreme court has ruled that, despite the relatively recent recognition of certain legal claims by state courts, if the English common law

recognized such claims in the early 1600s, they were a part of the Missouri common law when the constitution was adopted. Various legal treatises explain the origins of claims for breach of the duty of loyalty, civil conspiracy, and tortious interference with business expectancy and date them to the early English common law. So, it is clear that the date the Missouri courts recognized a particular common-law claim is irrelevant to the question of whether an analogous action existed at common law before our constitution was adopted. We find that the trial court erred in reducing the punitive-damages award against Halo on the basis of the statutory cap, as this violated All Star's constitutional right to trial by jury.

Because Halo also challenged the punitive-damages award as a violation of its due process rights and as a matter of remittitur after trial, and the trial court did not consider whether the award should be reduced for these reasons, we must return the case to the trial court for it to decide whether the award violates due process or should be remitted, i.e., reduced, under section 537.068, RSMo.

Halo files a cross-appeal arguing that All Star's punitive-damages claim should not have been submitted to the jury because All Star's evidence was not clear and convincing on the question of whether Halo's conduct warranted a punitive-damages award. Reviewing the record, we find that the evidence of misconduct as to Halo's conspiracy with the employee to breach the duty of loyalty and to interfere with All Star's business expectancy was sufficiently clear and convincing for the trial court to submit the punitive-damages request to the jury. Halo knew that the employee was still working for All Star when it started processing orders for him, knew that he had not told All Star that he was leaving while he solicited orders from All Star clients on behalf of Halo, and even requested that the employee give Halo proprietary information about All Star's clients. Halo hoped to generate \$450,000 to \$550,000 in business from All Star's clients in the employee's first year with Halo. We deny this point.

Halo also argues that the trial court erred in refusing its request to direct a verdict on the tortious-interference claim, in instructing the jury that it could award future damages for tortious interference, and in refusing to rule in its favor after the jury rendered a verdict against Halo. According to Halo, the evidence was insufficient to support an award of \$500,000 for tortious interference. We agree with All Star that this claim of error combines multiple bases for review in violation of our procedural rules and that Halo failed to properly preserve it by changing the basis for the error argued to the trial court and then before this Court. Even if we were to address the merits of Halo's claim that *no* competent evidence supported the submission of lost profits to the jury, we find that All Star submitted some evidence of lost profits. We deny this point.

Halo further challenges the trial court's admission of a particular exhibit and its refusal to strike a witness's testimony about All Star's future losses due to Halo's tortious interference with the company's business expectancy. The exhibit was admissible because it was a summary of voluminous records on which the witness relied in testifying about how she had computed All Star's likely future business losses, and it was admissible as a demonstrative exhibit showing how she had calculated the losses. The witness's testimony was also admissible. She was not an expert witness, but she was the wife of All Star's owner and had overseen the company's financial records for more than thirty years. The calculations were not complex, and she had sufficient personal knowledge of the company's business to testify as to damages, such as lost profits. This point is denied.

Finding error in the trial court's reduction of the punitive-damages award on the basis of the statutory cap, we reverse in part and remand for the trial court to determine whether the award must be reduced as a matter of due process or remittitur. We find no error in the court's submission of the tortious-interference and punitive-damages claims to the jury, and no evidentiary errors; therefore, we affirm in part.

**Opinion by: Thomas H. Newton, Judge**

January 12, 2021

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**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**